United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-1260

T-3181

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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P/S

WILLIAM S. PARISI as father and
natural guardian of VALERIE M. PARISI, an infant,

Plaintiff-Appellant

-against-

CASPAR WEINBERGER, SECRETARY OF
HEALTH, EDUCATION AND WELFARE,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX ON BEHALF OF APPELLANT

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227-1980

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CONTENTS

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

WILLIAM S. PARISI, as father and natural guardian of VALERIE M. PARISI, an infant,

Plaintiff,

-against-

CASPAR WEINBERGER, Secretary of Health, Education and Welfare,

Defendant.

- x

73-C-464

MEMORANDUM OF DECISION AND ORDER

December 27, 1973

APPEARANCES:

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TRAVIA, D. J.

This matter is before the court at this time on cross motions for summary judgment. The facts are undisputed. The sole issue to be decided is one of statutory construction involving child's insurance benefits ("benefits").

The salient facts are as follows. The claimant, Valerie M. Parisi, was born in New York City on June 23, 1952. On March 5, 1967, Aida A. Parisi, mother of the claimant, died fully insured under the applicable provisions of the Social Security Act. As a result, Valerie M Parisi was found entitled to and did receive benefits from March, 1967 to September, 1970 when such benefits were terminated by reason of her marriage to Charles G. Baldwin on September 12, 1970. The claimant's marriage to Charles G. Baldwin was terminated by divorce on the grounds of extreme cruelty in a Rhode Island court of competent jurisdiction on or about September 5, 1971. No finding granting alimony or support was made and none requested. At this point, it is important to note that Valerie M. Parisi was at all relevant times herein a full time student at Pembroke College of Brown University and under the age of 22. William S. Parisi, father of the claimant and plaintiff in the instant lawsuit, applied for reentitlement to benefits in behalf of his daughter on November 4, 1971. The plaintiff's application for reentitlement was initially denied on

March 14, 1972. Upon reconsideration, it was again denied on June 19, 1972. Lastly, an Administrative Law Judge of the Bureau of Hearings and Appeals denied the application on December 1, 1972. As a result, plaintiff has exhausted his administrative remedies and now petitions this court for relief.

The applicable statute is specific and quite clear. Title 42 U.S.C. § 402(d) states in pertinent part:

> "(d) (1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child--
>
> (A) has filed application for child's insurance benefits,
>
> * * * * *
>
> shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs--
>
> (D) the month in which such child dies or marries,
>
> * * * * *
>
> (6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual

terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1) (D) has occurred) beginning with the first month thereafter in which he--

> (A) (i) is a full-time student or is under a disability (as defined in section 423(d) of this title), and (ii) had not attained the age of 22, or" (emphasis added).

* * * * *

Moreover, the Secretary of Health, Education and Welfare has promulgated regulations to further clarify and implement this statute. /1

Plaintiff has abandoned his claim that the benefits should not have been terminated as a result of the claimant's marriage. Rather plaintiff contends that marriage may terminate benefits, but once the marriage has been legally dissolved the benefits should flow again. The crux of plaintiff's contention is that in order to be permanently precluded from receiving benefits, one must marry and remain married. The mere act of marriage is not enough to work a permanent preclusion. In support of this contention, plaintiff asserts that Congress intended the Social Security Act ("Act") to be remedial in

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/1 Title 20 C.F.R. § 404.320(b); Title 20 C.F.R. § 404.321 (b)(3).

nature.[2] Furthermore, plaintiff's argument continues that the courts should liberally construe the statute and resolve any doubts in favor of coverage.[3] Indeed, plaintiff maintains that exclusions cannot be accomplished by resort to overly formalistic interpretations.[4] Concomitantly, obvious exceptions should be read into the statute where to do so is necessary to effectuate its purpose.[5]

Admittedly, the Act is a remedial statute and should be liberally construed. However, this does not mean that the court may legislate where Congress has chosen not to. It is apparent from a reading of Title 42 U.S.C. § 402 (d), which this court believes to be unambiguous, that the act of marriage is intended to operate as a permanent bar to the receipt of benefits. No where is it mentioned that a divorce shall reentitle a claimant to benefits previously terminated by act of marriage. If Congress had intended divorce to have such an effect, it would have been explicitly set forth in

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/2 Haberman v. Finch, 418 F.2d 664, 666-67 (2d Cir. 1969).

/3 Herbst v. Finch, 473 F.2d 771 (2d Cir. 1972).

/4 Widerman v. Richardson, 415 F.2d 1228 (2d Cir. 1971), reversing, 329 F.Supp. 636 (E.D.N.Y. 1971).

/5 Schmiedigin v. Celebrezze, 245 F.Supp. 825 (D.D.C. 1965).

Title 42 U.S.C. § 402 (d). The remarks of Judge Weinfeld in Herzberg v. Finch, 321 F.Supp. 1367 (S.D.N.Y. 1971), are particularly instructive in a situation such as this. In Herzberg the court stated:

> "However compelling the facts may be in the instant case, the court does not have the power to amend the legislative act in order to rectify the alleged Congressional 'oversight'. To do so requires the court to legislate and not to interpret a statute which is clear and unambiguous." Id. at 1369.

The court also cannot overlook Social Security Ruling 67-33 and the regulations promulgated by the Secretary. A Social Security Ruling which interprets the law as applied to the particular facts of a case does not have the effect of law. /6 Nevertheless, in a situation, such as the instant one, where there is no case law interpreting the effect of divorce on reentitlement to benefits, the holding of the administrative agency should be paid deference. Social Security Ruling 67-33 involved an application for reentitlement to benefits by an individual whose benefits were terminated in 1961 upon his reaching the age of 18. In that matter, the claimant married in February, 1963; the marriage ended in

/6 Wagner v. Finch, 413 F.2d 267, 268 (5th Cir. 1969).

divorce in August, 1963; and on August 26, 1965, the claimant filed an application for reentitlement to benefits as a full-time student under the Social Security Amendments of 1965. In holding that the claimant's marriage precluded him from re-entitlement to benefits, the Social Security Administration stated:

> "Because C married in 1963, after he had been entitled to benefits on R's earnings record, section 202(d)(7) specifically precludes his reentitlement to child's insurance benefits on that earnings record, even though his marriage terminated in divorce and he was unmarried at the time he applied for reentitlement in August 1965."

Similarly, the applicable regulations indicate that the claimant in the case at bar is not reentitled to benefits. Title 20 C.F.R § 404.320 (b) provides:

> "A child whose entitlement to benefits terminated with the month before the month in which he attained age 18, or later, may thereafter (provided no event specified in paragraph (b) (2) and (3) of § 404.321 has occurred) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after such termination in which he is a full-time student and has not attained the age of 22." (emphasis added).

Here, one of the events specified in paragraph (b) (2) and (3) of § 404.321 has occurred.[7] The claimant was married

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[7] Title 20 C.F.R § 404.321 (b) (3) states in relevant part:

> "(b) The last month for which a child is entitled to a child's insurance benefit is the

on September 12, 1970 thereby precluding her from reentitlement to benefits.

Accordingly, it is

ORDERED that the plaintiff's motion for summary judgment is denied, and it is further

ORDERED that the defendant's motion for summary judgment is granted.

Submit order in accordance with this decision.

s/ Anthony J. Travia
U. S. D. J.

/7 (cont'd) month before the month in which any one of the following events first occurs:
(3) the child marries . . . ."